

1 Thomas I. Rozsa, State Bar No. 080615
2 Zsofia Nemeth, State Bar No. 298240

3 **ROZSA LAW GROUP LC**

4 18757 Burbank Boulevard, Suite 220
5 Tarzana, California 91356-3346
6 Telephone (818) 783-0990
7 Facsimile (818) 783-0992
8 Email: counsel@rozsalaw.com

9 Attorneys for Glo Cone International, LLC

10 **UNITED STATES DISTRICT COURT**

11 **CENTRAL DISTRICT OF CALIFORNIA (WESTERN DIVISION)**

12 GLO CONE INTERNATIONAL, LLC,
13 a limited liability company of Nevada,

14 Plaintiff,

15 vs.

16 LAROSE INDUSTRIES, LLC; a
17 limited liability company of New
18 Jersey; CRA-Z-ART CORP., a division
19 of Larose Industries, LLC;
20 WAL-MART STORES, INC., a
21 corporation of Delaware and DOES 1-
22 10, Inclusive,

23 Defendants.

CASE NO.: 2:17CV4552

COMPLAINT FOR
PATENT INFRINGEMENT

DEMAND FOR JURY TRIAL

COMES NOW Plaintiff GLO CONE INTERNATIONAL, LLC, a limited liability company of Nevada (hereafter “Plaintiff” or “Glo Cone”), and for its Complaint against LAROSE INDUSTRIES, LLC, a limited liability company of New Jersey; CRA-Z-ART CORP., a division of Larose Industries, LLC (hereafter Larose Industries, LLC and Cra-z-Art Corp. are jointly referred to as “Cra-Z-Art”); WAL-MART STORES, INC., a corporation of Delaware (hereafter “Wal-Mart”) (hereafter Cra-Z-Art and Wal-Mart are jointly referred to as “Defendants”) and DOES 1-10, complains and alleges as follows:

THE PARTIES

1. Plaintiff GLO CONE INTERNATIONAL, LLC is a limited liability company duly formed and existing under the laws of the State of Nevada and has its principal place of business located at 2025 S. Tremont St, Oceanside, California 92054. Glo Cone is the owner by assignment of all title, right and interest in and to the United States Patent 7,476,000 (hereafter “the Glo Cone Patent”), with the right to enforce the Glo Cone Patent.

2. Plaintiff is informed and believes and based thereon alleges that Defendant LAROSE INDUSTRIES, LLC is a limited liability company formed and existing under the laws of the State of New Jersey and has its principal place of business located at 1578 Sussex Turnpike, Randolph, New Jersey 07869.

3. Plaintiff is also informed and believes and based thereon alleges that Defendant CRA-Z-ART CORP. is a division of LAROSE INDUSTRIES, LLC and has its principal place of business located at 1578 Sussex Turnpike, Randolph, New Jersey 07869.

4. Plaintiff is informed and believes and based thereon alleges that Defendant WAL-MART STORES, INC. is a corporation formed and existing under the laws of the State of Delaware and has its principal place of business

ROZSA LAW GROUP LC
ATTORNEYS AT LAW
18757 BURBANK BOULEVARD, SUITE 220
TARZANA, CALIFORNIA 91356-3346
TELEPHONE (818) 783-0990

1 located at 702 SW 8th St., Bentonville, Arkansas, 72716. Plaintiff is informed and
2 believes and based thereon alleges that Wal-Mart also has an agent for service of
3 process in the State of California, C T Corporation System located at 818 W 7th
4 Street, Suite 930, Los Angeles, California 90017. Plaintiff is informed and believes
5 and based thereon alleges that Wal-Mart operates approximately 300 brick and
6 mortar retail stores in the State of California, and dozens of these retail stores are
7 located in the Central District of California.

8 5. Plaintiff is informed and believes and based thereon alleges that the
9 Defendants are doing continuous and substantial business within this judicial
10 district in the State of California. In particular, Plaintiff is informed and believes
11 and based thereon alleges that Cra-Z-Art has been and is advertising, offering for
12 sale, selling and/or placing products in the stream of commerce in the United
13 States knowing that they will be sold to consumers in this judicial district. As set
14 forth below, Defendants have been and are advertising, offering for sale and/or
15 selling to customers in the State of California and in this judicial district the
16 infringing Light Up Cotton Candy Wand (hereafter “Knockoff Cone”) as part of
17 Cra-Z-Art’s “The Real Cotton Candy Maker”, item no. r18065. Specifically, Wal-
18 Mart’s retail stores located in the State of California and in this judicial district
19 carry the products that contain the infringing items. In addition, Defendants, and
20 each of them, through their online stores offer for sale and directly sell to
21 customers located in the State of California and in this judicial district the products
22 that contain the infringing Knockoff Cones.
23

24 6. Plaintiff is ignorant of the true names and capacities of defendants
25 sued herein as DOES 1 through 10, inclusive, and therefore sues such defendants
26 by such fictitious names. At such time as the true names and capacities of these
27 DOE defendants are ascertained, Plaintiff will seek leave of the Court to amend its
28 Complaint to allege their true names and capacities. Plaintiff is informed and

ROZSA LAW GROUP LC
ATTORNEYS AT LAW
18757 BURBANK BOULEVARD, SUITE 220
TARZANA, CALIFORNIA 91356-3346
TELEPHONE (818) 783-0990

believes, and upon such information and belief alleges, that at all times mentioned herein, each of the DOE defendants was responsible, along with the named Defendants. Plaintiff is further informed and believes and based thereon alleges that the Defendants and the DOE defendants, and each and every one of them, knowingly and willfully conspired and agreed among themselves or induced each other to commit the wrongful acts as set forth herein. These wrongful acts were done pursuant to and in furtherance of this conspiracy, agreement and/or inducement. Plaintiff is further informed and believes and based thereon alleges that certain individuals named at this time as DOE defendants and each of them, are responsible in some manner, by their acts and/or omissions, for the matters alleged herein. The wrongful acts alleged herein were done through their acts and/or omissions.

7. Plaintiff is informed and believes and based thereon alleges that at all times mentioned herein, Defendants, and each of them, were and are the agents, servants, employees, parents, subsidiaries, and/or co-conspirators of each other, and were and are acting within the scope of such agency or employment, parent ownership, or subsidiary ownership, or otherwise participated in the improper conduct alleged herein. Each of the Defendants is in some form or manner responsible for the conduct herein complained of, and Plaintiff's harm and damages are proximately caused by the conduct of each.

JURISDICTION AND VENUE

8. This is an action for patent infringement, which arises under the patent laws of the United States, Title 35 U.S.C. §§ 101 et seq., particularly in violation of § 271 and under §§ 282-285. This Court has original jurisdiction over the subject matter of this cause of action pursuant to Article 1, Section 8 of the United States Constitution, and pursuant to the provisions of 28 U.S.C. §§ 1331 and 1338(a).

ROZSA LAW GROUP LC
ATTORNEYS AT LAW
18757 BUREAU BOULEVARD, SUITE 220
TARZANA, CALIFORNIA 91356-3346
TELEPHONE (818) 783-0990

1 9. This Court has personal jurisdiction over the Defendants who have
2 been and are transacting substantial and continuous business within this judicial
3 district and committed acts of infringement within this judicial district. Plaintiff is
4 informed and believes and based thereon alleges that Defendants are subject to this
5 Court's personal jurisdiction in that they have regular, established places of
6 business in this judicial district and in that the acts and transactions complained of
7 herein include the sale of infringing goods, the Knockoff Cones, in the State of
8 California and in this judicial district. In addition, Defendants' offer for sale and
9 sell goods nationwide over the Internet, including sales targeted to the State of
10 California and this judicial district, and therefore Defendants have purposefully
11 availed themselves of the benefits of being present in the State of California and
12 this judicial district.

13 10. Plaintiff is informed and believes and based thereon alleges that each
14 and every one of the Defendants is subject to the personal jurisdiction of this Court
15 because the Defendants have committed and/or actively induced the infringing and
16 improper acts complained of herein, and continue to do so, in this judicial district.

17 11. Plaintiff is informed and believes, and based thereon alleges that
18 venue is proper in this judicial district under 28 U.S.C. §§ 1391 and 1400, in that,
19 inter alia, the matters in controversy arise out of the activities undertaken in this
20 judicial district and the Defendants, and each of them, are subject to the personal
21 jurisdiction of this Court.
22

23 //

24 //

1 **THE INTELLECTUAL PROPERTY RIGHTS OF PLAINTIFF**

2 12. On January 13, 2009, the Glo Cone Patent issued for “HANDHELD
3 ILLUMINATED APPARATUS FOR RETAINING A FOOD ITEM IN AN
4 EDIBLE CONDITION WITH THE ILLUMINATION DIRECTLY PASSING
5 THROUGH THE FOOD ITEM”, a true and correct copy of which is attached
6 hereto as **EXHIBIT 1** and incorporated herein by reference.

7 13. Plaintiff has acquired and duly owns all right, title and interest in the
8 Glo Cone Patent by virtue of proper assignment, including the right to sue and
9 recover for infringement thereof.

10 14. The Glo Cone Patent is in full force and effect.

11 15. Plaintiff has been importing, advertising, promoting, distributing,
12 producing, offering for sale and selling products which practice the art disclosed in
13 the Glo Cone Patent, under the brand name “Glo Cone”, since at least as early as
14 February 2008.

15 16. Plaintiff has properly marked its products with the Patent Number
16 7,476,000 since the Glo Cone Patent issued. Plaintiff had been properly marking its
17 products with the designation “Patent Pending” while the application that matured
18 into the Glo Cone Patent was pending.

19 **INFRINGEMENT AND UNLAWFUL ACTS OF THE DEFENDANTS**

20 17. Plaintiff is informed and believes and based thereon alleges that Cra-
21 Z-Art has been and is importing, marketing, distributing, offering for sale and
22 selling the infringing Light Up Cotton Candy Wand – referenced as the Knockoff
23 Cones – as part of Cra-Z-Art’s “The Real Cotton Candy Maker” product. Cra-Z-
24 Art has been and is offering for sale and selling the Knockoff Cones through its
25 online store located at <http://cra-z-artshop.com>. Attached hereto as **EXHIBIT 2**
26 and incorporated herein by reference are true and correct printouts showing the
27
28

ROZSA LAW GROUP LC
ATTORNEYS AT LAW
18757 BURBANK BOULEVARD, SUITE 220
TARZANA, CALIFORNIA 91356-3346
TELEPHONE (818) 783-0990

1 Knockoff Cones offered for sale and sold as part of Cra-Z-Art's "The Real Cotton
2 Candy Maker" product through Cra-Z-Art's online store.

3 18. Plaintiff is informed and believes that defendant Wal-Mart is also
4 offering for sale and selling Cra-Z-Art's "The Real Cotton Candy Maker" products
5 that contain the Knockoff Cones. Wal-Mart offers for sale and sells the infringing
6 products through its brick and mortar retail stores, including the retail stores that
7 are located in the State of California. In addition to offering for sale and selling the
8 infringing products in Wal-Mart's brick and mortar retail stores, Wal-Mart also
9 offers for sale and sells the infringing products through its online store located at
10 <https://www.walmart.com>. A true and correct copy of a printout from Wal-Mart's
11 online store advertising the infringing products is attached hereto as **EXHIBIT 3**.

12 19. Attached hereto as **EXHIBIT 4** and incorporated herein by reference
13 are photographs showing Cra-Z-Art's "The Real Cotton Candy Maker" product
14 sold by Wal-Mart, including true and correct photographs of the Knockoff Cones.
15 The Knockoff Cones are prominently featured on the product's packaging.

16 **FIRST CAUSE OF ACTION**

17 (Patent Infringement, 35 U.S.C. § 271)

18 20. Plaintiff repeats, realleges and incorporates by reference, as though
19 fully set forth herein, the allegations contained in Paragraphs 1 – 19, above.

20 21. On January 13, the Glo Cone Patent issued for "HANDHELD
21 ILLUMINATED APPARATUS FOR RETAINING A FOOD ITEM IN AN
22 EDIBLE CONDITION WITH THE ILLUMINATION DIRECTLY PASSING
23 THROUGH THE FOOD ITEM".

24 22. Plaintiff has acquired and duly owns all right, title and interest in the
25 Glo Cone Patent by virtue of proper assignment, including the right to sue and
26 recover for infringement thereof.

27 23. The Glo Cone Patent is in full force and effect.
28

1 24. Plaintiff has been advertising, promoting, distributing, producing,
2 importing, offering for sale and selling products which practice the art disclosed in
3 the Glo Cone Patent.

4 25. Plaintiff has properly marked its products with the Patent Number
5 7,476,000 after the date the Glo Cone Patent issued. Plaintiff had been properly
6 marking its products with the designation "Patent Pending" while its application
7 that matured into the Glo Cone Patent was pending.

8 26. Plaintiff is informed and believes, and based thereon alleges that
9 Defendants, and each and every one of them, have notice of Plaintiff's rights in the
10 Glo Cone Patent.

11 27. Defendants, and each and every one of them, have infringed the Glo
12 Cone Patent by manufacturing, using, importing, distributing, advertising, offering
13 to sell and/or selling, without license or authority, Knockoff Cones embodying the
14 invention claimed in the Glo Cone Patent in the United States, or by supplying
15 infringing products to others to use, thereby inducing and/or contributing to the
16 infringement of the Glo Cone Patent.

17 28. Plaintiff is informed and believes, and based thereon alleges that the
18 individuals who are the controlling parties of Cra-Z-Art and/or Wal-Mart, and each
19 of them, have personally decided, directed, contributed to and induced the
20 infringing activities of the Defendants infringing the Glo Cone Patent with
21 knowledge of the Glo Cone Patent by manufacturing, producing, importing,
22 promoting, distributing, using, offering for sale and selling the Knockoff Cones
23 and/or causing or inducing those to be manufactured, produced, imported,
24 promoted, distributed, used, offered for sale and/or sold.

25 29. As a direct and proximate result of the foregoing acts of Defendants,
26 Plaintiff has suffered, and is entitled to, monetary damages in an amount to be
27 determined at trial, including, without limitation, all profits lost by Plaintiff as a
28

ROZSA LAW GROUP LC
ATTORNEYS AT LAW
18757 BURBANK BOULEVARD, SUITE 220
TARZANA, CALIFORNIA 91356-3346
TELEPHONE (818) 783-0990

1 result of Defendants' unlawful activities, all of Defendants' profits from their sale
2 of the Knockoff Cones including any and all profits from convoyed sales,
3 including, without limitation, any and all profits from the sales of Cra-Z-Art's
4 "The Real Cotton Candy Maker", but at a minimum, Plaintiff is entitled to a
5 reasonable royalty for all sales of the Knockoff Cones and the cotton candy maker
6 product that the Knockoff Cones were sold in conjunction with. Plaintiff is also
7 entitled to its costs of suit and pre- and postjudgment interest.

8 30. Plaintiff is informed and believes, and based thereon alleges that
9 Defendants' acts were in conscious and willful disregard for Plaintiff's rights, and
10 Defendants have been and presently are engaged in willful and deliberate
11 infringement of the Glo Cone Patent.

12 31. Defendants' willful infringement of the Glo Cone Patent and the
13 resulting damage to Plaintiff is such as to warrant the trebling of damages in order
14 to provide just compensation.

15 32. Defendants' continuing infringement has inflicted, and unless
16 enjoined by this Court, will continue to inflict great and irreparable harm upon
17 Plaintiff. Plaintiff has no adequate remedy at law. Plaintiff is entitled to
18 preliminary and permanent injunctions enjoining Defendants from engaging in
19 further acts of infringement.
20

21 33. Plaintiff is informed and believes, and based thereon alleges that this
22 case is exceptional under 35 U.S.C. § 285 and Plaintiff is entitled to a recovery of
23 their reasonable attorneys' fees and costs.

24 //

25 //

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for judgment against Defendants as follows:

1. That this Court adjudge that the Glo Cone Patent is valid and enforceable and in full force and effect;

2. That this Court adjudge that Defendants, and each of them, have literally infringed the Glo Cone Patent, and for that infringement this Court award Plaintiff all of Plaintiff's lost profits as a result of such infringement, and all of Defendants' profits as a result of Defendants' sales of the Knockoff Cones including, without limitation, any and all profits from convoyed sales, and not less than a reasonable royalty on the sale of all of the Knockoff Cones and the cotton candy machines that they were sold in conjunction with the Knockoff Cones, resulting from such infringement;

3. That this Court adjudge that Defendants, and each of them, have infringed the Glo Cone Patent under the Doctrine of Equivalents, and for that infringement this Court award Plaintiff all of Plaintiff's lost profits as a result of such infringement, and all of Defendants' profits as a result of Defendants' sales of the Knockoff Cones including, without limitation, any and all profits from convoyed sales, and not less than a reasonable royalty on the sale of all of the Knockoff Cones and the cotton candy machines that they were sold in conjunction with the Knockoff Cones, resulting from such infringement;

4. That this Court adjudge that Defendants, and each of them, by virtue of the manufacture, production, importation, use and sale of the Knockoff Cones have contributed to the infringement of or induced the infringement of the Glo Cone Patent, and for that infringement this Court award Plaintiff all of Plaintiff's

ROZSA LAW GROUP LC
ATTORNEYS AT LAW
18757 BURBANK BOULEVARD, SUITE 220
TARZANA, CALIFORNIA 91356-3346
TELEPHONE (818) 783-0990

1 lost profits as a result of such infringement, and all of Defendants' profits as a
2 result of Defendants' sales of the Knockoff Cones including, without limitation,
3 any and all profits from convoyed sales, and not less than a reasonable royalty on
4 the sale of all of the Knockoff Cones and the cotton candy machines that they were
5 sold in conjunction with the Knockoff Cones, resulting from such infringement;

6 5. That this Court issue a preliminary and then a permanent injunction
7 enjoining Defendants, their officers, directors, agents, servants, employees,
8 attorneys, confederates, parents, subsidiaries and divisions, and all persons and/or
9 entities acting for, with, by, through, or in concert or participation with them from:

11 (a) infringing the Glo Cone Patent, either directly or indirectly;

12 (b) inducing others to infringe the Glo Cone Patent;

13 (c) manufacturing, producing, importing, advertising, promoting,
14 marketing, distributing, offering for sale and/or selling the Knockoff Cones
15 individually, or in conjunction with another product;

16
17 6. That this Court order that Defendants deliver up to the Court any and
18 all Knockoff Cones in their possession, custody and/or control that infringe the Glo
19 Cone Patent and to serve a copy of such list on Plaintiff's attorneys;

20 7. That this Court order that Defendants deliver up to the Court any and
21 all documents reflecting or relating to the manufacture, importation, production,
22 purchase, distribution and/or sale of any Knockoff Cones that infringe the Glo
23 Cone Patent and to serve a copy of such list on Plaintiff's attorneys;

24
25 8. That this Court order that Defendants, within thirty (30) days after
26 service of judgment with notice of entry thereof upon them, be required to file with
27 the Court and serve upon Plaintiff's attorneys a written report, under oath, setting
28

1 forth in detail the manner in which Defendants have complied with paragraphs 1-7,
2 above;

3 9. That this Court order that Defendants account for and pay over to
4 Plaintiff their profits and cumulative damages sustained by Plaintiff by reason of
5 Defendants' unlawful acts of patent infringement, herein alleged;

6 11. That this Court order disgorgement and/or restitution of Defendants'
7 profits to Plaintiff;

8 12. That this Court award Plaintiff its reasonable costs of suit and
9 attorneys' fees;

10 13. That the present case be found exceptional and that attorneys' fees be
11 awarded to Plaintiff under 35 U.S.C. § 285;

12 14. That this Court award to Plaintiff enhanced damages up to three times
13 their amount as provided by law, against Defendants to punish Defendants for their
14 malicious and oppressive actions of willful and deliberate violation of Plaintiff's
15 patent rights;

16 15. That this Court award Plaintiff pre- and postjudgment interest on its
17 damages; and

18 16. That this Court award Plaintiff such other and further relief as the
19 Court may deem just and proper.

20 Dated: June 20, 2017

21 ROZSA LAW GROUP L.C.

22 By: /s/ Thomas I. Rozsa

23 Thomas I. Rozsa

24 Zsafia Nemeth

25 Attorneys for Glo Cone International, LLC

DEMAND FOR JURY TRIAL

Plaintiff Glo Cone International, LLC hereby demands that all claims or causes of action raised in this Complaint be tried by a jury to the fullest extent possible under the United States and California Constitutions, statutes and laws.

Respectfully submitted:

Dated: June 20, 2017

ROZSA LAW GROUP L.C.

By: /s/ Thomas I. Rozsa

Thomas I. Rozsa

Zsofia Nemeth

ROZSA LAW GROUP L.C.

18757 Burbank Boulevard, Suite 220

Tarzana, California 91356

Tel. (818) 783-0990

Fax (818) 783-0992

E-mail: counsel@rozsalaw.com

Attorneys for Glo Cone International, LLC

ROZSA LAW GROUP LC
ATTORNEYS AT LAW
18757 BURBANK BOULEVARD, SUITE 220
TARZANA, CALIFORNIA 91356-3346
TELEPHONE (818) 783-0990